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OFFICE OF PETITIONS

In re Application of :
Nozomu Kitagishi : DECISION ON PETITION
Application No. 08/936,182 : TO WITHDRAW HOLDING OF
Filed: 24 September, 1997 : ABANDONMENT
Atty. Docket No. 1232-4046US2 :

This is a decision on the petition, filed on 11 July, 2006 (postcard date 8 September, 2005), to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to timely submit corrected drawings as required by the Notice of Allowability mailed on 12 August, 2003, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on 2 January, 2004.

Petitioner asserts that corrected drawings were in fact timely filed. In support of the petition, petitioner submitted a copy of a date-stamped post card receipt acknowledging receipt of, *inter alia*, "Formal Drawings 1-19" in the United States Patent and Trademark Office (Office) on 17 November, 2003. Additionally, petitioner has submitted a copy of 17 sheets of drawings containing Figures 1-19. The petitioner has also submitted a paper itemizing the filing of the above-referenced drawings and containing a Certificate of Mailing dated 12 November, 2003, signed by petitioner's registered patent attorney, David V. Rossi.

The corrected drawings are not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the reply to the

Notice of Allowability was received in the Office but was not matched with the application file.

The date stamped on the post card of 17 November, 2003, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

As petitioner has provided convincing evidence that a reply to the non-final Office action mailed on 12 August, 2003, was filed with a certificate of mailing dated 12 November, 2003, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

The application file will be referred to the Technology Center's technical support staff for review of the amendment filed under 37 CFR 1.312 with the present petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
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Office of Petitions